

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-14 ISO-00 OIC-04 JUSE-00 INT-08 DOTE-00

OMB-01 TRSE-00 SWF-02 AGR-20 ACDA-19 AEC-11 CG-00

FMC-04 AID-20 CEQ-02 CIAE-00 COA-02 COME-00 DODE-00

EB-11 EPA-04 INR-10 L-03 NSF-04 NSC-07 NSAE-00 PM-07

RSC-01 SCI-06 SS-20 SP-03 FEA-02 H-03 PA-04 PRS-01

USIA-15 AF-10 ARA-16 EA-11 EUR-25 NEA-10 DRC-01 /288 W
----- 113372

R 190013Z APR 74

FM USMISSION USUN NY

TO SECSTATE WASHDC 3642

C O N F I D E N T I A L SECTION 1 OF 2 USUN 1381

E.O. 11652: GDS

TAGS: PBOR

SUBJ: LOS GROUP OF FIVE - DEEP SEABEDS RULES AND REGULATIONS

1. LOS CONSULTATIONS ON RULES AND REGULATIONS FOR DEEP SEABED MINING ARE UNDERWAY WITH THE FOLLOWING REPRESENTATIVES PRESENT:

JAPAN - IGUCHI, AKIMOTO, NAGUCHI

FRANCE - MARTIN-SANE, LE GOUX

U.K. - ARCHER, CHAMBERLAIN

USSR - KASMIN YAKOVLEV

2. GROUP OF FIVE MEETING OF EXPERTS ON DEEP SEABED RULES AND REGULATIONS ON APRIL 16TH AT USUN WAS OPENED BY AMBASSADOR STEVENSON, WHO ADDRESSED SEVERAL KEY ISSUES RELATED TO APPROACHING CARACAS NEGOTIATION ON DEEP SEABED. HE STRESSED US AWARENESS OF IMPORTANCE OF ACCESS TO DEEP SEABED MINERALS AND SUGGESTED THAT GROUP MIGHT WISH TO CONSIDER IN COURSE OF WEEK'S DISCUSSION WHETHER IT WOULD BE ADVISABLE FOR CONFERENCE TO NEGOTIATE RULES AND REGULATIONS FOR DEEP SEA MINING BEFORE DECIDING CRITICAL

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ULATIONS FOR DEEP SEA MINING BEFORE DECIDING CRITICAL

ISSUES IN TREATY, WHETHER GROUP SHOULD ATTEMPT TO AGREE ON A SINGLE RULES AND REGULATIONS PACKAGE AND HOW TO PREVENT PROGRESS OF WORK IN COMMITTEE I FROM GETTING TOO FAR AHEAD OF PROGRESS IN COMMITTEE II AT CARACAS.

3. ALL DELEGATIONS EMPHASIZED INFORMALITY OF TALKS AND TENTATIVE NATURE OF PROPOSALS AND STATEMENTS MADE. US PROPOSED AGENDA WAS INFORMALLY ADOPTED AS GUIDELINES FOR DISCUSSION.

4. GROUP REVIEWED RECENT TECHNOLOGICAL AND DIPLOMATIC INITIATIVES IN DEEP SEA MINING, EXTENT OF DEVELOPING COUNTRY INTEREST IN DRAFTING RULES AND REGULATIONS AND DEGREE OF IMPORTANCE WHICH MEMBERS OF GROUP ATTACH TO INCLUDING RULES AND REGULATIONS FOR DEEP SEA MINING IN LOS TREATY. ALL DESL AGREED THAT IT WAS NECESSARY TO INCLUDE BASIC RULES FOR DEEP SEA EXPLOITATION IN TREATY, ALTHOUGH JAPANESE REP (IGUCHI) EMPHASIZED DIFFICULTY OF ESTABLISHING VERY DETAILED RULES AND REGULATIONS AT THIS TIME.

5. THERE WAS SOME DISCUSSION OF WHETHER GROUP STILL CONSIDERED IT PRACTICAL TO DRAFT RULES AND REGULATIONS THAT WOULD APPLY EQUALLY TO LICENSING OR ENTERPRISE SYSTEMS. GROUP AGREED THAT IT WAS PROBABLY IMPOSSIBLE TO DRAFT NEUTRAL RULES FOR BOTH LICENSING SYSTEM AND ENTERPRISE AS PRESENTLY CONCEIVED, BUT US REP (RATINER) RAISED TACTICAL QUESTION OF WHETHER IT WOULD BE ADVISABLE TO BEGIN CARACAS WITH NEGOTIATIONS OF RULES AND REGULATIONS WHICH MEET SUBSTANTIVE OBJECTIVES OF LICENSING SYSTEM BUT ARE COSMETICALLY ACCEPTABLE TO LDC'S. USSR REP, PROBABLY IN ORDER TO PROTECT SOVIET POSITION ON MIXED LICENSING/ENTERPRISE SYSTEM, EXPRESSED SOME DISAGREEMENT WITH THIS TACTICAL APPROACH AND SUGGESTED THAT CONFERENCE MUST FIRST DECIDE BASIC ISSUE OF WHO MAY EXPLOIT SEABED AND THEN DRAFT RULES TO FIT THAT DECISION. GROUP DECIDED TO LEAVE THIS DIFFICULT TACTICAL QUESTION UNTIL LATER IN WEEK'S DISCUSSION.

6. US REP (RATINER) EXPLAINED US APPROACH TO SUPPLEMENTARY RULE-MAKING PROCEDURE, EMPHASIZING NEED TO EXPRESSLY DEFINE SUBJECT FOR SUPPLEMENTARY RULES IN RULES AND REGS AND IN CONFIDENTIAL

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TREATY ITSELF, THUS LIMITING DISCRETION OF AUTHORITY. ALL MEMBERS OF GROUP AGREED ON BASIC OBJECTIVE OF US RULE-MAKING SYSTEM, ALTHOUGH JAPANESE AND USSR REPS SAID QUESTION OF WHICH BODY ESTABLISHED SUPPLEMENTARY RULES WAS NOT CRITICAL. USSR REP (KASMIN) INDICATED HOWEVER THAT USSR COULD SUPPORT PLACING THIS FUNCTION IN TECHNICAL COMMISSION AS US PORPOSED. FRENCH REP (MARTIN-SANE) REITERATED THAT FOR TIME BEING FRENCH POSITION PLACED SUPPLEMENTARY RULE-MAKING POWER IN

INDIVIDUAL STATES RATHER THAN IN BODY OF AUTHORITY.

7. REGARDING US VIEW OF IMPORTANCE OF TRIBUNAL TO LIMITING AUTHORITY'S DISCRETION, FRENCH REP (MARTIN-SANE) STATED THAT FRANCE NOW FELT THAT TRIBUNAL WAS LEAST OFFENSIVE REPOSITORY OF WHATEVER DISCRETION WAS NECESSARY IN SYSTEM AND WAS READY TO MOVE TOWARD US POSITION ON THIS QUESTION AND ACCEPT NEED FOR TRIBUNAL. JAPANESE REP GENERALLY SUPPORTED US POSITION AND UK REP RESTATED POSITION THAT AD HOC RATHER THAN PERMANENT TRIBUNAL MACHINERY WAS ADVISABLE.

8. ALL MEMBERS OF GROUP AGREED THAT EXCLUSIVE RIGHTS FOR OCEAN MINERS WERE NECESSARY, BUT THERE WAS CERTAIN DISAGREEMENT ON HOW EXCLUSIVE RIGHTS SHOULD BE OBTAINED. FRENCH REP (LE GOUX) EXPLAINED FRENCH DRAFT RULES AND REGULATIONS WHICH CALL FOR PUBLIC ADVERTISING OF CLAIMS AS INTENDED TO ENSURE THAT PRIOR RIGHTS OF COMPANIES WOULD BE RECOGNIZED. US REP (RATINER) POINTED OUT THAT FRENCH SYSTEM APPEARED TO INVITE COMPETING CLAIMS AND LEFT A GREAT DEAL OF DISCRETION IN AUTHORITY TO DECIDE HOW CLAIMS WERE ALLOCATED. US AND JAPANESE SYSTEMS, ON OTHER HAND UTILIZED SECRECY PROCEDURE IN EFFORT TO MINIMIZE COMPETING CLAIMS AND DISCRETION OF AUTHORITY. USSR REP (KASMIN) SUGGESTED THAT GROUP MIGHT WISH TO CONSIDER TYPES OF CRITERIA WHICH SHOULD BE APPLIED IN GRANTING EXCLUSIVE RIGHTS AND MENTIONED THAT SOME FORM OF QUOTA SYSTEM, LIKE THE FRENCH PROPOSED, MIGHT BE USEFUL. IN LATER MEETING (REPORTED SEPT) FRANCE WITHDREW ITS PROPOSAL FOR PUBLIC ADVERTISING OF BLOCKS.

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RSC-01 SCI-06 SS-20 SP-03 FEA-02 H-03 PA-04 PRS-01

USIA-15 AF-10 ARA-16 EA-11 EUR-25 NEA-10 DRC-01 /288 W

----- 113505

R 190013Z APR 74

FM USMISSION USUN NY

TO SECSTATE WASHDC 3643

C O N F I D E N T I A L SECTION 2 OF 2 USUN 1381

9. UK REP (ARCHER) EXPLAINED DETAILS OF BRITISH QUOTA SYSTEM PROPOSAL WHEREBY AMOUNT OF SEABED AREA OPENED FOR EXPLOITATION AT ANY GIVEN TIME IS LIMITED AND AVAILABLE AREA IS ALLOCATED AMONG STATES BASED ON CRITERIA OF POPULATION ETC. FRENCH AND USSR REPS STATED THAT THEIR DELS FAVORED SOME LIMITATION ON AREA OF SEABED ALLOTTED TO ANY ONE STATE, BUT DID NOT HAVE FIRM VIEWS ON DETAILS OF SYSTEM. UK, FRENCH, JAPANESE AND USSR REPS AGREED THAT ONE REASON FOR SUPPORTING QUOTA SYSTEM WAS ITS APPEAL TO LDC'S. HOWEVER, UK, FRANCE AND USSR MADE CLEAR THAT QUOTA WAS NECESSARY TO PROTECT THEIR OWN NATIONAL INTERESTS IN ACQUIRING MINE SITES. US REP (RATINER) REITERATED STRONG US OPPOSITION TO QUOTA SYSTEM, SAYING THERE WAS NO CHANCE IN FORESEEABLE FUTURE THAT US WOULD CHANGE IS POSITION. HE BASED US OPPOSITION ON BELIEF THAT SUPPORT FOR ANY FORM OF QUOTA WOULD LEAD IN NEGOTIATIONS TO PRODUCTION LIMITATIONS. US REP (MOORE) ADDED THAT QUOTA SYSTEM WOULD INEVITABLY RESULT IN ECONOMIC BARRIERS WHICH WOULD NOT SERVE INTEREST OF EITHER DEVELOPED OR DEVELOPING COUNTRIES. UK REP (ARCHER) DISCUSSED AT LENGTH
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HIS VIEW THAT EVENTS IN RAW MATERIALS MARKETS IN RECENT MONTHS MAY LEAD LDC'S TRO REALIZATION THAT THEIR REAL INTEREST IS NOT IN LIMITING PRODUCTION BUT IN ENCOURAGING IT TO ENSURE LOWER PRICES. JAPANESE REP (AKIMOTO) MENTIONED THAT JAPANESE QUOTA PROPOSAL WAS ANNUAL ONE, AND APPEARED TO EXPRESS SOME DISSATISFACTION WITH QUOTA WHICH LIMITED OVERALL AREA OF SEABED ALLOCATED TO STATES. (IN PRIVATE CONVERSATION AKIMOTO INDICATED THAT JAPAN WAS CONCERNED THAT US DRAFT WOULD FORCE PARTICIPANTS IN FOREIGN CONSORTIA TO SELECT ONE SPONSORING STATE. HE INDICATED THAT IF SOME SATISFACTORY SOLUTION FOR PROTECTING JAPANESE INTERESTS IN JOIN VENTURES COULD BE DEvised, JAPAN MIGHT BE WILLING TO DROP ITS SUPPORT FOR QUOTA)

10. USSR REP INDICATED THAT TREATY CAN ONLYLY STRUCTURE RELATIONSHIPS AMONG STATES SINCE STATES ARE SUBJECTS OF RIGHTS AND OBLIGATIONS UNDER INT'L LAW, AND INT'L LAW SHOULD NOT INTERFERE IN INTERNAL MATTERS OF STATES. US REP (RATINER) POINTED OUT THAT ROLE OF SPONSORING STATES IN US APPROACH IS DESIGNED TO TAKE ACCOUNT OF THIS VIEW, WHICH

US SHARES IN MANY RESPECTS. US APPROACH IS OPTIONAL IN THAT STATES MAY GET RIGHTS THEMSELVES AND THEREFORE DOES NOT INTERFERE WITH SOVEREIGNTY OF STATES. JAPANESE AND UK REPS (AKIMOTO AND CHAMBERLAIN) SUGGESTED THAT WHETHER SPONSORING STATE OR SUB-LICENSING TERMINOLOGY IS USED DOES NOT MAKE A GREAT DIFFERENCE AND THAT THE JURIDICAL DIFFICULTY MAY BE LARGELY THEORETICAL. IN THEIR VIEW US SPONSORING STATE APPROACH AND JAPANESE AND UK SUB-LICENSE APPROACH ARE VERY SIMILAR. U.S. REP (RATINER) DESCRIBED US POSITION THAT PRIVATE PARTIES SHOULD HAVE DIRECT ACCESS TO DISPUTE SETTLEMENT MACHINERY FOR ROUTINE TECHNICAL DISPUTES AND THAT STATES SHOULD NOT BE REQUIRED TO GET INVOLVED IN THIS TYPE OF DISPUTE. JAPANESE AND USSR REPS OBJECTED TO GRANTING PRIVATE PARTIES ACCESS TO TRIBUNAL AND UK REP SUGGESTED THAT PRIVATE PARTY ACCESS TO TRIBUNAL MIGHT REDUCE NEGOTIABILITY OF GENERAL PRINCIPLE OF DISPUTE SETTLEMENT. GROUP EXPRESSED GENERAL AGREEMENT THAT ROLE OF STATES IN SYSTEM MIGHT BECOME LESS IMPORTANT IF A JOINT VENTURE RATHER THAN LICENSING APPROACH WERE UTILIZED.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, SEABED, MARITIME LAW, MINING, MEETINGS, MEETING DELEGATIONS, CONSULTANTS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 APR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974USUNN01381
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740091-0056
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740427/aaaaaxzw.tel
Line Count: 242
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 01 JUL 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01 JUL 2002 by cunninfx>; APPROVED <26 MAR 2003 by GolinoFR>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: LOS GROUP OF FIVE - DEEP SEABEDS RULES AND REGULATIONS
TAGS: PBOR
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005